



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2012 REGULAR SESSION

HOUSE BILL NO. 155

AS ENACTED

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Mary Sue Helm

1 AN ACT relating to the creation and administration of trusts and estates.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 386.450 is amended to read as follows:

4 As used in KRS 386.450 to 386.504:

- 5 (1) "Accounting period" means a calendar year unless another twelve (12) month period
6 is selected by a fiduciary. The term includes a portion of a calendar year or other
7 twelve (12) month period that begins when an income interest begins or ends when
8 an income interest ends;
- 9 (2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and
10 devisee and, in the case of a trust, an income beneficiary and a remainder
11 beneficiary;
- 12 (3) "District Court approval" means the consent of the District Court having
13 jurisdiction over the fiduciary, with notice of the request for approval being given to
14 all current beneficiaries and all reasonably ascertainable remainder beneficiaries in
15 the oldest generation;
- 16 (4) "Fiduciary" means a personal representative or a trustee. The term includes an
17 executor, administrator, successor personal representative, and public administrator;
- 18 (5) "Income" means money or property that a fiduciary receives as current return from a
19 principal asset. The term includes a portion of receipts from a sale, exchange, or
20 liquidation of a principal asset, to the extent provided in Articles 4 and 5 of the
21 Kentucky Principal and Income Act;
- 22 (6) "Income beneficiary" means a person to whom net income of a trust is or may be
23 payable;
- 24 (7) "Income interest" means the right of an income beneficiary to receive all or part of
25 ~~net income, whether~~ the terms of the trust require it to be distributed or authorize it
26 to be distributed in the trustee's discretion;
- 27 (8) "Mandatory income interest" means the right of an income beneficiary to receive net

1 income that the terms of the trust require the fiduciary to distribute;

2 (9) "Net income" means the total receipts allocated to income during an accounting
3 period minus the disbursements made from income during the period, plus or minus
4 transfers under KRS 386.450 to 386.504 to or from income during the period;

5 (10) "Notice" means written notice of the time and place for a hearing on the request for
6 District Court approval that is placed postage prepaid in the United States mail at
7 least thirty (30) days prior to the hearing and addressed to the last known address of
8 the party to receive notice, and may be proved by an affidavit of the fiduciary or
9 fiduciary's counsel filed at the hearing stating the name and address to which notice
10 was mailed postage prepaid and the date of the mailing;

11 (11) "Principal" means property held in trust for distribution to a remainder beneficiary
12 when the trust terminates;

13 (12) "Remainder beneficiary" means a person entitled to receive principal when an
14 income interest ends;

15 (13) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with
16 respect to the trust, expressed in a manner that admits of its proof in a judicial
17 proceeding, whether by written or spoken words or by conduct; ~~and~~

18 (14) "Trustee" includes an original, additional, or successor trustee, whether or not
19 appointed or confirmed by a court; and

20 (15) "Unitrust" means both a trust converted into a unitrust under Section 2 of this
21 Act and a trust initially established as a unitrust. Unless inconsistent with the
22 terms of the trust or will, paragraphs (f), (g), (h), (i), and (m) of subsection (3) of
23 Section 2 of this Act apply to the unitrust initially so established.

24 ➔Section 2. KRS 386.454 is amended to read as follows:

25 (1) Notwithstanding any provision of Kentucky law to the contrary, the fiduciary of a
26 trust or estate to which by law KRS 286.3-277 does not apply may elect to have
27 such provisions apply to the administration of the trust or estate by providing the

notice as required under paragraph (g) of subsection (2) of this section ~~[Notwithstanding any provision of Kentucky law to the contrary, the trustee of a trust to which by law KRS 286.3-277 does not apply may elect to have such provisions apply to the administration of the trust with approval of the District Court].~~

(2) (a) A fiduciary may, after providing notice as required under paragraph (f) of this subsection, adjust between principal and income to the extent the fiduciary considers necessary if KRS 286.3-277 applies by law or by election made under subsection (1) of this section, the terms of the trust or will describe the amount that may or shall be distributed to a beneficiary by referring to the trust's or estate's income, and the fiduciary determines, after applying the rules in KRS 386.452(1), that the fiduciary is unable to comply with KRS 386.452(2). Additionally, a fiduciary may reserve the right to convert the trust to a unitrust under subsection (3) of this section in the future.

(b) In deciding whether and to what extent to exercise the power conferred by this subsection, a fiduciary shall consider all factors relevant to the trust or estate and its beneficiaries, including the following factors to the extent they are relevant:

1. The nature, purpose, and expected duration of the trust or estate;
2. The intent of the settlor or testator;
3. The identity and circumstances of the beneficiaries;
4. The needs for liquidity, regularity of income, and preservation and appreciation of capital;
5. The assets held in the trust or estate and:
 - a. The extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal

1 property, or real property;

2 b. The extent to which an asset is used by a beneficiary; and

3 c. Whether an asset was purchased by the fiduciary or received
 4 from the settlor or testator;

5 6. The net amount allocated to income under the other sections in this
 6 chapter and the increase or decrease in the value of the principal
 7 assets, which the fiduciary may estimate as to assets for which market
 8 values are not readily available;

9 7. Whether and to what extent the terms of the trust or will give the
 10 fiduciary the power to invade principal or accumulate income or
 11 prohibit the fiduciary from invading principal or accumulating
 12 income, and the extent to which the fiduciary has exercised a power
 13 from time to time to invade principal or accumulate income;

14 8. The actual and anticipated effect of economic conditions and market
 15 volatility on principal and income and effects of inflation and
 16 deflation; and

17 9. The anticipated tax consequences of an adjustment.

18 (c) A fiduciary shall not make an adjustment:

19 1. That diminishes the income interest in a trust that requires all of the
 20 income to be paid at least annually to a spouse and for which an estate
 21 tax or gift tax marital deduction would be allowed, in whole or in part,
 22 if the fiduciary did not have the power to make the adjustment;

23 2. That reduces the actuarial value of the income interest in a trust to
 24 which a person transfers property with the intent to qualify for a gift
 25 tax exclusion;

26 3. That changes the amount payable to the beneficiary as a fixed annuity
 27 or a fixed fraction of the value of the trust assets;

- 1 4. From any amount that is permanently set aside for charitable
- 2 purposes under a will or the terms of a trust unless both income and
- 3 principal are so set aside;
- 4 5. If possessing or exercising the power to make an adjustment causes an
- 5 individual to be treated as the owner of all or part of the trust or estate
- 6 for income tax purposes, and the individual would not be treated as
- 7 the owner if the fiduciary did not possess the power to make an
- 8 adjustment;
- 9 6. If possessing or exercising the power to make an adjustment causes all
- 10 or part of the trust or estate assets to be included for estate tax
- 11 purposes in the estate of an individual who has the power to remove a
- 12 fiduciary or appoint a fiduciary, or both, and the assets would not be
- 13 included in the estate of the individual if the fiduciary did not possess
- 14 the power to make an adjustment;
- 15 7. If the fiduciary is a beneficiary of the trust or estate; or
- 16 8. If the fiduciary is not a beneficiary, but the adjustment would benefit
- 17 the fiduciary directly or indirectly; except that any effect on the
- 18 fiduciary's compensation shall not preclude an adjustment so long as
- 19 the fiduciary's fees are reasonable and otherwise comply with the
- 20 applicable law.
- 21 (d) If subparagraph 5., 6., 7., or 8. of paragraph (c) of this subsection applies to
- 22 a fiduciary and there is more than one (1) fiduciary or an additional
- 23 fiduciary who is appointed by court order, a binding agreement, or
- 24 otherwise as provided by law, a co-fiduciary to whom the provision does not
- 25 apply may make an adjustment unless the exercise of the power by the
- 26 remaining fiduciary or fiduciaries is not permitted by the terms of the trust
- 27 or will. If subparagraph 5., 6., 7., or 8. of paragraph (c) of this subsection

1 restricts all fiduciaries from possessing or exercising a power under this
2 section, the fiduciary may petition the District Court for the court to effect
3 the intended conversion or action.

4 (e) A fiduciary may release the entire power conferred by this subsection or
5 may release only the power to adjust from income to principal or the power
6 to adjust from principal to income if the fiduciary is uncertain about
7 whether possessing or exercising the power will cause a result described in
8 subparagraphs 1. to 6. of paragraph (c) of this subsection or if the fiduciary
9 determines that possessing or exercising the power will or may deprive the
10 trust or estate of a tax benefit or impose a tax burden not described in
11 paragraph (c) of this subsection. The release may be permanent or for a
12 specified period, including a period measured by the life of an individual.
13 Further, a fiduciary may divide a trust or estate into one (1) or more
14 fractional shares if the division does not change the beneficial interests.

15 (f) Terms of a trust or will that limit the power of a fiduciary to make an
16 adjustment between principal and income do not affect the application of
17 this section unless it is clear from the terms of the trust or will that the
18 terms are intended to deny the fiduciary the power of adjustment conferred
19 by this subsection.

20 (g) A fiduciary shall not make an election or adjustment under this section
21 unless all of the following apply:

22 1. A fiduciary shall give written notice of the fiduciary's intention to
23 make an adjustment, or any intention to make an election to have the
24 provisions of KRS 286.3-277, if applicable, apply to the trust, to each
25 beneficiary by certified mail with restricted delivery and return receipt,
26 who, on the date the notice is given:

27 a. Is a distributee or permissible distributee of trust income or

principal; or

b. Would be a distributee or permissible distributee of principal if the interests of the distributees described in subparagraph 1.a. of this paragraph terminated and the trust then terminated immediately before the notice was given and if no powers of appointment were exercised;

2. There is at least one (1) beneficiary under subparagraph 1.a. of this paragraph and at least one (1) other reasonably ascertainable person who is a remainder beneficiary under subparagraph 1.b. of this paragraph; and

3. Every beneficiary to whom notice was sent pursuant to subparagraph 1. of this paragraph has received the notice as evidenced by the certified mail return receipt and no beneficiary objects to the adjustment or election in writing delivered to the fiduciary within thirty (30) days after the notice is given under subparagraph 1. of this paragraph.

(h) The fiduciary may petition the District Court under this subsection to order an adjustment or an election if any of the following apply:

1. A beneficiary timely objects to the adjustment or the election, or a beneficiary has not received the notice as evidenced by the certified mail return receipt;

2. There is no reasonably ascertainable beneficiary under subparagraph 1.a. of paragraph (g) of this subsection; or

3. There is no reasonably ascertainable beneficiary under subparagraph 1.b. of paragraph (g) of this subsection.

~~[A trustee may adjust between principal and income to the extent the trustee considers necessary if KRS 286.3-277 applies by law or by election made and approved under~~

subsection (1) of this section, the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income, the trustee determines, after applying the rules in KRS 386.452(1), that the trustee is unable to comply with KRS 386.452(2) and the adjustment, including an adjustment method such as an annual percentage distribution if the percentage is not less than three percent (3%) nor more than five percent (5%) of the fair market value of the trust assets determined annually, is approved by the District Court.]

(3) *The following rules shall govern a fiduciary's conversion of a trust to a unitrust:*

(a) Unless expressly prohibited by the terms of a trust, a fiduciary may release the power to make adjustments under subsection (2) of this section and convert to a unitrust as described in this subsection, if all of the following apply:

1. The fiduciary determines that the conversion will enable the fiduciary better to carry out the intent of the settlor or testator and the purposes of the trust;

2. The fiduciary gives written notice of the fiduciary's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the fiduciary will make under this subsection, to each beneficiary, by certified mail with restricted delivery and return receipt, who, on the date the notice is given:

a. Is a distributee or permissible distributee of trust income or principal; or

b. Would be a distributee or permissible distributee of trust principal if the interests of the distributees described in subparagraph 2.a. of this paragraph terminated and the trust

then terminated immediately before the notice was given and if
no powers of appointment were exercised;

3. There is at least one (1) beneficiary under subparagraph 2.a. of this
paragraph and at least one (1) other reasonably ascertainable person
who is a remainder beneficiary under subparagraph 2.b. of this
paragraph; and

4. Every beneficiary to whom notice was sent pursuant to subparagraph
2. of this paragraph has received the notice as evidenced by the
certified mail return receipt and no beneficiary objects to the
conversion to a unitrust in a writing delivered to the fiduciary within
thirty (30) days after the notice is given under subparagraph 2. of this
paragraph;

(b) The fiduciary may petition the District Court under this subsection to order
a conversion to a unitrust if any of the following apply:

1. A party timely objects to the conversion to a unitrust, or a beneficiary
has not received the notice as evidenced by the certified mail return
receipt;

2. There is no reasonably ascertainable beneficiary under subparagraph
2.a. of paragraph (a) of this subsection; or

3. There is no reasonably ascertainable beneficiary under subparagraph
2.b. of paragraph (a) of this subsection;

(c) Notwithstanding the provisions of paragraph (h) of this subsection, a
beneficiary may request a fiduciary to convert to a unitrust. If the fiduciary
does not convert, the beneficiary may petition the District Court to order the
conversion. The court shall approve the conversion or direct the requested
conversion if the court concludes that the conversion will enable the
fiduciary to better carry out the intent of the settlor or testator and the

purposes of the trust;

(d) In deciding whether to exercise a power to convert to a unitrust under this section, a fiduciary may consider, among other things, the factors set forth in paragraph (a) of subsection (2) of this section;

(e) After a trust is converted to a unitrust, all of the following provisions shall apply:

1. The fiduciary shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

a. From appreciation of principal;

b. From earnings and distributions from principal; or

c. From both;

2. The fiduciary shall make regular distributions in accordance with the terms of the trust, or the terms of the will, as the case may be, construed in accordance with the provisions of this section; and

3. Unless expressly prohibited by the terms of the trust, the term "income" in the terms of a trust or will means an annual distribution, the "unitrust distribution," equal to the percentage, the "payout percentage," that is no less than three percent (3%) and no more than five percent (5%) and that the fiduciary may determine in the fiduciary's discretion from time to time, or, if the fiduciary makes no determination, that shall be four percent (4%), of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

a. The three (3) preceding years; or

b. The period which the trust has been in existence;

(f) The fiduciary may in the fiduciary's discretion from time to time determine all of the following:

1. The effective date of a conversion to a unitrust;
2. The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases;
3. The frequency of unitrust distributions during the year;
4. The effect of other payments from or contributions to the trust on the trust's valuation;
5. Whether to value the trust's assets annually or more frequently;
6. What valuation dates to use;
7. How frequently to value nonliquid assets and whether to estimate their value;
8. Whether to omit from the calculations trust property occupied or possessed by a beneficiary; and
9. Any other matters necessary for the proper functioning of the unitrust;

(g) The following provisions regarding unitrust distribution shall apply:

1. Expenses which would be deducted from income if the trust were not a unitrust shall not be deducted from the unitrust distribution;
2. Unless otherwise provided by the terms of the trust, the unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from the net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term

capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust; and

3. To the extent necessary to cause gains from the sale or exchange of unitrust assets to be treated as income under any federal, state, or local income tax, such as Section 643 of the Internal Revenue Code and its regulations, including Treasury Regulation sec. 1.643(b)-1, as amended or renumbered, the fiduciary has the discretionary power to allocate the gains to income, so long as the power is reasonably and impartially exercised;

(h) Notwithstanding any other provision of this section to the contrary, a fiduciary or beneficiary may petition the District Court:

1. To change the payout percentage;

2. To provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

3. To average the valuation of the trust's net assets over a period other than three (3) years; and

4. To reconvert from a unitrust to the preconversion terms of the trust;

(i) Upon a reconversion, the power to adjust under subsection (2) of this section shall be revived, and a trustee shall not be precluded from seeking a later unitrust conversion;

(j) A conversion to a unitrust does not affect a provision in the terms of a trust directing or authorizing the fiduciary to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal of the trust;

(k) A fiduciary shall not possess or exercise any power under this subsection in any of the following circumstances:

1. The unitrust distribution would be made from any amount that is

1 permanently set aside for charitable purposes under the terms of a
 2 trust and for which a charitable deduction from a federal gift or estate
 3 tax has been taken unless both income and principal are so set aside;

4 2. The possession or exercise of the power would cause an individual to
 5 be treated as the owner of all or part of the trust for federal income tax
 6 purposes and the individual would not be treated as the owner if the
 7 fiduciary did not possess or exercise the power;

8 3. The possession or exercise of the power would cause all or any part of
 9 the trust estate to be subject to any federal gift or estate tax with
 10 respect to the individual and the trust estate would not be subject to
 11 such taxation if the fiduciary did not possess or exercise the power;

12 4. The possession or exercise of the power would result in the
 13 disallowance of a federal gift or estate tax marital deduction which
 14 would be allowed if the fiduciary did not have the power; or

15 5. The fiduciary is a beneficiary of the trust;

16 (l) If subparagraph 2., 3., or 5. of paragraph (k) of this subsection applies to a
 17 fiduciary and there is more than one (1) fiduciary or an additional fiduciary
 18 who is appointed by a court order, binding agreement, or otherwise as
 19 provided by law, a co-fiduciary to whom subparagraph 2., 3., or 5. or
 20 paragraph (k) of this subsection does not apply may possess and exercise
 21 the power unless the possession or exercise of the power by the remaining
 22 fiduciary or fiduciaries is not permitted by the terms of the trust or will. If
 23 subparagraph 2., 3., or 5. of paragraph (k) of this subsection restricts all
 24 fiduciaries from possessing or exercising a power under this section, the
 25 fiduciary may petition the District Court for the court to effect the intended
 26 conversion or action; and

27 (m) A fiduciary may release any power conferred by this section if any of the

following applies:

1. The fiduciary is uncertain about whether possessing or exercising the power will cause a result described in subparagraph 2., 3., or 5. of paragraph (k) of this subsection; or

2. The fiduciary determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in paragraph (k) of this subsection.

The release may be permanent or for a specified period, including a period measured by the life of an individual.

~~[A personal representative may adjust between principal and income in the same manner as a trustee if KRS 286.3-277 applies to the personal representative by law or if the personal representative elects to have KRS 286.3-277 apply to the administration of the estate, upon approval of the District Court, which approval may be an adjustment method such as an annual percentage distribution if the percentage is not less than three percent (3%) nor more than five percent (5%) of the fair market value of the trust assets determined annually, and:~~

~~(a) The amount distributable to a beneficiary of the estate is determined by reference to the income of the estate; and~~

~~(b) The personal representative determines, and after applying the rules of KRS 386.452(1), that the personal representative is unable to comply with KRS 386.452(2).]~~

(4) Unless a beneficiary has requested the fiduciary in writing that the fiduciary consider an adjustment, unitrust conversion, or change in payout percentage, nothing in this section imposes a duty on the fiduciary to make an adjustment, conversion, or change in payout percentage under subparagraph (e)3. of subsection (3) of this section, and the fiduciary is not liable for not considering whether to make an adjustment, conversion, or change in payout percentage

under this section. ~~[In deciding whether and to what extent to exercise the power conferred by subsection (2) or (3) of this section, a fiduciary shall consider all factors relevant to the trust or estate and its beneficiaries, including the following factors to the extent they are relevant:~~

~~(a) The nature, purpose, and expected duration of the trust or estate;~~

~~(b) The intent of the settlor or testator;~~

~~(c) The identity and circumstances of the beneficiaries;~~

~~(d) The needs for liquidity, regularity of income, and preservation and appreciation of capital;~~

~~(e) The assets held in trust or estate and:~~

~~1. The extent to which those assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property;~~

~~2. The extent to which an asset is used by a beneficiary; and~~

~~3. Whether an asset was purchased by the fiduciary or received from the settlor or testator;~~

~~(f) The net amount allocated to income under the other sections of KRS 386.450 to 386.504 and the increase or decrease in the value of the principal assets, which the fiduciary may estimate as to assets for which market values are not readily available;~~

~~(g) Whether and to what extent the terms of the trust or will give the fiduciary the power to invade principal or accumulate income or prohibit the fiduciary from invading principal or accumulating income, and the extent to which the fiduciary has exercised a power from time to time to invade principal or accumulate income;~~

~~(h) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and~~

1 ~~(i) The anticipated tax consequences of an adjustment.]~~

2 (5) *If there shall be a District Court order approving or disapproving an election to*
 3 *apply KRS 286.3-277 to a trust or to an estate under subsection (1) of this section*
 4 *or a power to adjust under subsection (2) of this section or converting a trust to a*
 5 *unitrust under subsection (3) of this section, then an aggrieved party, no later*
 6 *than thirty (30) days from the date of such order, may institute an adversary*
 7 *proceeding in Circuit Court pursuant to KRS 24A.120(2).*~~[A fiduciary shall not~~
 8 ~~make an adjustment:~~

9 ~~(a) That diminishes the income interest in a trust that requires all of the income to~~
 10 ~~be paid at least annually to a spouse and for which an estate tax or gift tax~~
 11 ~~marital deduction would be allowed, in whole or in part, if the fiduciary did~~
 12 ~~not have the power to make the adjustment;~~

13 ~~(b) That reduces the actuarial value of the income interest in a trust to which a~~
 14 ~~person transfers property with the intent to qualify for a gift tax exclusion;~~

15 ~~(c) That changes the amount payable to a beneficiary as a fixed annuity or a fixed~~
 16 ~~fraction of the value of the trust assets;~~

17 ~~(d) From any amount that is permanently set aside for charitable purposes under a~~
 18 ~~will or the terms of a trust unless both income and principal are so set aside;~~

19 ~~(e) If possessing or exercising the power to make an adjustment causes an~~
 20 ~~individual to be treated as the owner of all or part of the trust or estate for~~
 21 ~~income tax purposes, and the individual would not be treated as the owner if~~
 22 ~~the fiduciary did not possess the power to make an adjustment;~~

23 ~~(f) If possessing or exercising the power to make an adjustment causes all or part~~
 24 ~~of the trust or estate assets to be included for estate tax purposes in the estate~~
 25 ~~of an individual who has the power to remove a fiduciary, appoint a fiduciary,~~
 26 ~~or both, and the assets would not be included in the estate of the individual if~~
 27 ~~the fiduciary did not possess the power to make an adjustment;~~

1 ~~(g) If the fiduciary is a beneficiary of the trust or estate; or~~

2 ~~(h) If the fiduciary is not a beneficiary, but the adjustment would benefit the~~
 3 ~~fiduciary directly or indirectly; except that any effect on the fiduciary's~~
 4 ~~compensation shall not preclude an adjustment so long as the fiduciary's fees~~
 5 ~~are reasonable and otherwise comply with the applicable law.]~~

6 (6) *This section is intended to further describe and clarify the powers previously*
 7 *granted under the immediately preceding version of this section. These*
 8 *clarifications and revisions shall apply to and be available for all applicable and*
 9 *qualifying trusts, including any trust which may have previously sought relief*
 10 *under a prior version of this section.*~~[If paragraph (e), (f), (g), or (h) of subsection~~
 11 ~~(5) of this section applies to a fiduciary and there is more than one (1) fiduciary, a~~
 12 ~~cofiduciary to whom the provision shall not apply may make the adjustment unless~~
 13 ~~the exercise of the power by the remaining fiduciary or fiduciaries is not permitted~~
 14 ~~by the terms of the trust.~~

15 ~~(7) A fiduciary may release the entire power conferred by subsection (2) or (3) of this~~
 16 ~~section or may release only the power to adjust from income to principal or the~~
 17 ~~power to adjust from principal to income if the fiduciary is uncertain about whether~~
 18 ~~possessing or exercising the power will cause a result described in paragraphs (a) to~~
 19 ~~(f) of subsection (5) of this section or paragraph (h) of subsection (5) of this section;~~
 20 ~~or if the fiduciary determines that possessing or exercising the power will or may~~
 21 ~~deprive the trust of a tax benefit or impose a tax burden not described in subsection~~
 22 ~~(5) of this section. The release may be permanent or for a specified period,~~
 23 ~~including a period measured by the life of an individual. Such release shall require~~
 24 ~~approval of the District Court. Further, with approval of the District Court, a~~
 25 ~~fiduciary may divide a trust into one (1) or more fractional shares if the division~~
 26 ~~does not change the beneficial interests.~~

27 ~~(8) Terms of a trust or will that limit the power of a fiduciary to make an adjustment~~

1 between principal and income do not affect the application of this section unless it
 2 is clear from the terms of the trust or will that the terms are intended to deny the
 3 fiduciary the power of adjustment conferred by subsection (2) or (3) of this section.

4 ~~(9) An aggrieved party may, no later than thirty (30) days from the date of the order~~
 5 ~~approving a power to adjust under subsection (2) or (3) of this section, institute an~~
 6 ~~adversary proceeding in Circuit Court pursuant to KRS 24A.120(2).]~~

7 ➔ Section 3. KRS 386.502 is amended to read as follows:

8 ~~[(1) The provisions of KRS 386.454 that allow a trustee to adopt the prudent investor~~
 9 ~~rule and make allocations to income shall not apply to any trust without District~~
 10 ~~Court approval.~~

11 ~~(2)]~~ The provisions of KRS 386.450 to 386.504~~[, other than KRS 386.454,]~~ shall apply
 12 to all trusts administered under Kentucky law, except as otherwise specifically
 13 provided in the instrument creating the trust, regardless of when created.

14 ➔ SECTION 4. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
 15 READ AS FOLLOWS:

16 (1) For the purposes of this section, the following definitions apply:

17 (a) "Current beneficiary" means a person who is a permissible distributee of
 18 trust income or principal;

19 (b) "Original trust" means a trust established under an irrevocable trust
 20 instrument pursuant to the terms of which a trustee has discretionary power
 21 to distribute principal or income of the trust to or for the benefit of one (1)
 22 or more current beneficiaries of the trust; and

23 (c) "Second trust" means a trust established under an irrevocable trust
 24 instrument, the current beneficiaries of which are one (1) or more of the
 25 current beneficiaries of the original trust. The second trust may be a trust
 26 created under the same trust instrument as the original trust or under a
 27 different trust instrument.

1 (2) A trustee of an original trust may, without authorization by the court, exercise the
 2 discretionary power to distribute principal or income to or for the benefit of one
 3 (1) or more current beneficiaries of the original trust by appointing all or part of
 4 the principal or income of the original trust subject to the power in favor of the
 5 trustee of a second trust. The trustee of the original trust may exercise this power
 6 whether or not there is a current need to distribute principal or income under any
 7 standard provided in the terms of the original trust. The trustee's special power to
 8 appoint trust principal or income in further trust under this section includes the
 9 power to create the second trust.

10 (3) The second trust may be a trust created or administered under the laws of any
 11 jurisdiction, within or without the United States.

12 (4) The terms of the second trust shall be subject to all of the following:

13 (a) The beneficiaries of the second trust may include only beneficiaries of the
 14 original trust;

15 (b) A beneficiary who has only a future beneficial interest, vested or contingent,
 16 in the original trust cannot have the future beneficial interest accelerated to
 17 a present interest in the second trust;

18 (c) The terms of the second trust may not reduce any fixed income, annuity, or
 19 unitrust interest of a beneficiary in the assets of the original trust, including
 20 an interest which is to take effect in the future;

21 (d) If any contribution to the original trust qualified for a marital or charitable
 22 deduction for federal income, gift, or estate tax purposes under the Internal
 23 Revenue Code, then the second trust shall not contain any provision that, if
 24 included in the original trust, would have prevented the original trust from
 25 qualifying for the deduction or that would have reduced the amount of the
 26 deduction;

27 (e) If contributions to the original trust have been excluded from the gift tax by

1 the application of Sections 2503(b) and 2503(c) of the Internal Revenue
 2 Code, then the second trust shall provide that the beneficiary's remainder
 3 interest in the contributions shall vest and become distributable no later
 4 than the date upon which the interest would have vested and become
 5 distributable under the terms of the original trust;

6 (f) If any beneficiary of the original trust has a currently exercisable power of
 7 withdrawal over trust property, then either:

8 a. The terms of the second trust shall provide a power of withdrawal in
 9 the second trust identical to the power of withdrawal in the original
 10 trust; or

11 b. Sufficient trust property shall remain in the original trust to satisfy the
 12 currently exercisable power of withdrawal;

13 (g) If the original trust holds stock of an S corporation, the terms of the second
 14 trust shall not prevent or eliminate an election to be a qualified subchapter
 15 S trust or an electing small business trust or result in the termination of the
 16 S election of such corporation;

17 (h) If the power to distribute principal or income in the original trust is subject
 18 to an ascertainable standard, then the power to distribute income or
 19 principal in the second trust shall be subject to the same or a more
 20 restrictive ascertainable standard as in the original trust when the trustee
 21 exercising the power described in subsection (2) of this section is a possible
 22 beneficiary under the standard; and

23 (i) The second trust may confer a power of appointment upon a beneficiary of
 24 the original trust to whom or for the benefit of whom the trustee has the
 25 power to distribute principal or income of the original trust. The permissible
 26 appointees of the power of appointment conferred upon a beneficiary may
 27 include persons who are not beneficiaries of the original or second trust.

The power of appointment conferred upon a beneficiary shall be subject to KRS 381.224, 381.225, and 381.226 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the original trust.

(5) The court may appoint a special fiduciary with the authority to exercise the power to appoint principal or income under subsection (2) of this section.

(6) The exercise of the power to appoint principal or income under subsection (2) of this section:

(a) Shall be considered an exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate;

(b) Shall be subject to KRS 381.224, 381.225, and 381.226 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the original trust; and

(c) Is not prohibited by a spendthrift provision or by a provision in the original trust instrument that prohibits amendment or revocation of the trust.

(7) To effect the exercise of the power to appoint principal or income under subsection (2) of this section, all of the following shall apply:

(a) The exercise of the power to appoint shall be made by an instrument in writing, signed and acknowledged by the trustee, setting forth the manner of the exercise of the power, including the terms of the second trust and the effective date of the exercise of the power. The instrument shall be filed with the records of the original trust;

1 (b) The trustee shall give written notice of the trustee's intention to exercise the
2 power to all current beneficiaries of the original trust and all beneficiaries
3 of the oldest generation of remainder beneficiaries of the first trust, by
4 certified mail with restricted delivery and return receipt, at least sixty (60)
5 days prior to the effective date of the exercise of the power to appoint. The
6 notice shall include a copy of the instrument described in paragraph (a) of
7 this subsection;

8 (c) If all beneficiaries entitled to notice have received the notice as evidenced by
9 the certified mail return receipt and waive the notice period by a signed
10 written instrument delivered to the trustee, the trustee's power to appoint
11 principal or income shall be exercisable after notice is waived by all such
12 beneficiaries, notwithstanding the effective date of the exercise of the
13 power;

14 (d) A current beneficiary or a beneficiary who is not a current beneficiary but
15 is a member of the oldest generation of the remainder beneficiaries of the
16 original trust may, no later than thirty (30) days from the date of receiving
17 notice under paragraph (b) of this subsection, commence a judicial
18 proceeding in District Court pursuant to KRS 386.675 to object to the
19 proposed exercise of the power under subsection (2) of this section. In such
20 case the proposed exercise of the power shall require consent of the District
21 Court as defined by subsection (3) of Section 1 of this Act. Any
22 determination of the District Court shall be subject to subsection (5) of
23 Section 2 of this Act; and

24 (e) In the event that a beneficiary did not receive the notice as evidenced by the
25 certified mail return receipt, and no other beneficiary has commenced a
26 proceeding under paragraph (d) of this subsection, the trustee may seek the
27 approval of the District Court to exercise the power.

(8) Nothing in this section shall be construed to create or imply a duty of the trustee to exercise the power to distribute principal or income, and no inference of impropriety shall be made as a result of a trustee not exercising the power to appoint principal or income conferred under subsection (2) of this section.

Nothing in this section shall be construed to abridge the right of any trustee who has the power to appoint property in further trust that arises under the terms of the original trust or under any provision of law or under common law.

(9) This section shall not apply to any charitable remainder trust as defined in 26 U.S.C. sec. 664(d).

(10) A trustee or beneficiary may commence a judicial proceeding in the District Court pursuant to KRS 386.675 to approve or disapprove of a proposed exercise of the trustee's special power to appoint to a second trust pursuant to subsection (2) of this section. In such case approval by the District Court shall have the same meaning as provided in subsection (3) of Section 1 of this Act and the approval shall be subject to subsection (5) of Section 2 of this Act.

➔Section 5. KRS 386.810 is amended to read as follows:

(1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust including but not limited to the powers specified in subsection (3).

(2) In the exercise of his powers including the powers granted by this chapter, a trustee has a duty to act with due regard to his obligation as a fiduciary, including a duty to give consideration to available tax exemptions, deductions, or credits for tax purposes. "Tax" includes, but is not limited to, any federal, state, or local income, gift, estate, or inheritance tax.

(3) A trustee has the power, subject to subsections (1) and (2) of this section:

(a) To collect, hold, and retain trust assets received from a trustor until, in the

1 judgment of the trustee, disposition of the assets should be made; and the
2 assets may be retained even though they include an asset in which the trustee
3 is personally interested;

4 (b) To receive additions to the assets of the trust;

5 (c) To continue or participate in the operation of any business or other enterprise,
6 and to effect incorporation, dissolution, or other change in the form of the
7 organization of the business or enterprise;

8 (d) To acquire an undivided interest in a trust asset in which the trustee, in any
9 trust capacity, holds an undivided interest;

10 (e) To invest and reinvest trust assets in accordance with the provisions of the
11 trust or as provided by law;

12 (f) To deposit trust funds in a bank, including a bank operated by the trustee;

13 (g) To acquire or dispose of an asset, for cash or on credit, at public or private
14 sale; and to manage, develop, improve, exchange, partition, change the
15 character of, or abandon a trust asset or any interest therein; and to encumber,
16 mortgage, or pledge a trust asset for a term within or extending beyond the
17 term of the trust, in connection with the exercise of any power vested in the
18 trustee;

19 (h) To make ordinary or extraordinary repairs or alterations in buildings or other
20 structures, to demolish any improvements, to raze existing or erect new party
21 walls or buildings;

22 (i) To subdivide, develop, or dedicate land to public use; or to make or obtain the
23 vacation of plats and adjust boundaries; or to adjust differences in valuation
24 on exchange or partition by giving or receiving consideration; or to dedicate
25 easements to public use without consideration;

26 (j) To enter for any purpose into a lease as lessor or lessee with or without option
27 to purchase or renew for a term within or extending beyond the term of the

- 1 trust;
- 2 (k) To enter into a lease or arrangement for exploration and removal of minerals
3 or other natural resources or enter into a pooling or unitization agreement;
- 4 (l) To grant an option involving disposition of a trust asset, or to take an option
5 for the acquisition of any asset;
- 6 (m) To vote a security, in person or by general or limited proxy;
- 7 (n) To pay calls, assessments, and any other sums chargeable or accruing against
8 or on account of securities;
- 9 (o) To sell or exercise stock subscription or conversion rights; to consent, directly
10 or through a committee or other agent, to the reorganization, consolidation,
11 merger, dissolution, or liquidation of a corporation or other business
12 enterprise;
- 13 (p) To hold a security in the name of a nominee or in other form without
14 disclosure of the trust, so that title to the security may pass by delivery, but the
15 trustee is liable for any act of the nominee in connection with the stock so
16 held;
- 17 (q) To insure the assets of the trust against damage or loss, and the trustee against
18 liability with respect to third persons;
- 19 (r) To borrow money to be repaid from trust assets or otherwise; to advance
20 money for the protection of the trust, and for all expenses, losses, and liability
21 sustained in the administration of the trust or because of the holding or
22 ownership of any trust assets, for which advances with any interest the trustee
23 has a lien on the trust assets as against the beneficiary;
- 24 (s) To pay or contest any claim; to settle a claim by or against the trust by
25 compromise, arbitration, or otherwise; and to release, in whole or in part, any
26 claim belonging to the trust to the extent that the claim is uncollectible;
- 27 (t) To pay taxes, assessments, compensation of the trustee, and other expenses

- 1 incurred in the collection, care, administration, and protection of the trust;
- 2 (u) To allocate items of income or expense to either trust income or principal, as
- 3 provided by law, including creation of reserves out of income for depreciation,
- 4 obsolescence, or amortization, or for depletion in mineral or timber properties;
- 5 (v) To pay any sum distributable to a beneficiary under legal disability, without
- 6 liability to the trustee, by paying the sum to the beneficiary or by paying the
- 7 sum for the use of the beneficiary either to a legal representative appointed by
- 8 the court, or if none, to a relative;
- 9 (w) To effect distribution of property and money in divided or undivided interests
- 10 and to adjust resulting differences in valuation;
- 11 (x) To employ persons, including attorneys, auditors, investment advisors, or
- 12 agents to advise or assist the trustee in the performance of his administrative
- 13 duties; to act without independent investigation upon their recommendations;
- 14 and instead of acting personally, to employ one (1) or more agents to perform
- 15 any act of administration, whether or not discretionary;
- 16 (y) To prosecute or defend actions, claims, or proceedings for the protection of
- 17 trust assets and of the trustee in the performance of his duties;
- 18 (z) To execute and deliver all instruments which will accomplish or facilitate the
- 19 exercise of the powers vested in the trustee; and
- 20 (aa) To take such actions as are necessary to cause gains from the sale or
- 21 exchange of trust assets, as determined for federal income tax purposes, to
- 22 be taxed for federal income tax purposes as a part of a distribution of
- 23 income, including the power to allocate such gains to income for the
- 24 purpose of making discretionary distributions and to allocate such gains to
- 25 income which has been increased by an adjustment from principal to
- 26 income pursuant to subsection (2) of Section 2 of this Act, to a unitrust
- 27 distribution, or to a distribution of principal to a beneficiary.

1 ➔ Section 6. KRS 395.195 is amended to read as follows:

2 Except as restricted or otherwise provided by the will, or by KRS 395.200, a personal
3 representative, acting reasonably for the benefit of the interested persons, may properly:

4 (1) Retain assets owned by the decedent pending distribution or liquidation including
5 those in which the representative is personally interested or which are otherwise
6 improper for trust investment;

7 (2) Receive assets from fiduciaries, or other sources;

8 (3) Perform, compromise or refuse performance for proper cause of the decedent's
9 contracts that continue as obligations of the estate, as he may determine under the
10 circumstances;

11 (4) Satisfy written charitable pledges of the decedent irrespective of whether the
12 pledges constituted binding obligations of the decedent or were properly presented
13 as claims, if in the judgment of the personal representative the decedent would have
14 wanted the pledges completed under the circumstances;

15 (5) If funds are not needed to meet debts and expenses currently payable and are not
16 immediately distributable, deposit or invest liquid assets of the estate, including
17 moneys received from the sale of other assets, in federally insured interest-bearing
18 accounts, readily marketable secured loan arrangements or other prudent
19 investments which would be reasonable for use by trustees generally;

20 (6) Acquire or dispose of an asset, other than land, for cash or on credit, at public or
21 private sale; and manage, exchange, or change the character of an estate asset;

22 (7) Enter for any purpose into a lease for personal property as lessor or lessee, with or
23 without option to purchase or renew, for a term within or extending beyond the
24 period of administration;

25 (8) Abandon personal property when, in the opinion of the personal representative, it is
26 valueless, or is so encumbered, or is in such condition that it is of no benefit to the
27 estate;

- 1 (9) Vote stocks or other securities in person or by general or limited proxy;
- 2 (10) Pay calls, assessments, and other sums chargeable or accruing against or on account
3 of securities, unless barred by the provisions relating to claims;
- 4 (11) Hold a security in the name of a nominee or in other form without disclosure of the
5 interest of the estate but the personal representative is liable for any act of the
6 nominee in connection with the security so held;
- 7 (12) Insure the assets of the estate against damage, loss and liability and himself against
8 liability as to third persons;
- 9 (13) Borrow money with or without security to be repaid from the probatable assets or
10 otherwise; and advance money for the protection of the estate;
- 11 (14) Effect a fair and reasonable compromise with any debtor or obligor, or extend,
12 renew or in any manner modify the terms of any obligation owing to the estate. If
13 the personal representative holds a mortgage, pledge or other lien upon property of
14 another person, he may, in lieu of foreclosure, accept a conveyance or transfer of
15 encumbered assets from the owner thereof in satisfaction of the indebtedness
16 secured by lien;
- 17 (15) Pay taxes, assessments, compensation of the personal representative, and other
18 expenses incident to the administration of the estate;
- 19 (16) Sell or exercise stock subscription or conversion rights; consent, directly or through
20 a committee or other agent, to the reorganization, consolidation, merger,
21 dissolution, or liquidation of a corporation or other business enterprise;
- 22 (17) Allocate items of income or expense to either estate income or principal, as
23 permitted or provided by law;
- 24 (18) Employ persons, including attorneys, auditors, investment advisors, or agents, to
25 advise or assist the personal representative in the performance of his administrative
26 duties; act without independent investigation upon their recommendations; and
27 instead of acting personally, employ one (1) or more agents to perform any act of

administration, whether or not discretionary;

(19) Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(20) Sell or mortgage any personal property or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

(21) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(22) Satisfy, settle or compromise claims and distribute the estate as provided by law;

and

(23) Take such actions as are necessary to cause gains from the sale or exchange of estate assets as determined for federal income tax purposes, to be taxed for federal income tax purposes as a part of a distribution of income, including the power to allocate such gains to income for the purpose of making discretionary distributions and to allocate such gains to income which has been increased by an adjustment from principal to income pursuant to subsection (2) of Section 2 of this Act, to a unitrust distribution, or to a distribution of principal to a beneficiary.

➔Section 7. KRS 381.180 is amended to read as follows:

(1) Estates of every kind held or possessed in trust shall be subject to the debts and charges of the beneficiaries thereof the same as if the beneficiaries also owned the similar legal interest in the property, unless the trust is a spendthrift trust.

(2) As used herein, unless the context otherwise requires, "spendthrift trust" means a trust in which by the terms of the instrument creating it a valid restraint on the voluntary and involuntary alienation of the interest of a beneficiary is imposed.

(3) Specific language shall not be necessary to create a spendthrift trust and it shall be sufficient if the instrument creating the trust manifests an intention to create a spendthrift trust.

1 (4) If an instrument creating a trust provides that a beneficiary is entitled to receive
2 income of the trust and that his interest shall not be alienable by him and shall not
3 be subject to alienation by operation of law or legal process, the restraint on the
4 voluntary and involuntary alienation of his right to income due and to accrue shall
5 be valid.

6 (5) If an instrument creating a trust provides that a beneficiary is entitled to receive
7 principal of the trust at a future time and that his interest shall not be alienable by
8 him and shall not be subject to alienation by operation of law or legal process, the
9 restraint on the voluntary and involuntary alienation of his right to principal shall be
10 valid.

11 (6) Although a trust is a spendthrift trust, the interest of the beneficiary shall be subject
12 to the satisfaction of an enforceable claim against the beneficiary:

13 (a) By the spouse or child of the beneficiary for support, or by the spouse for
14 maintenance;

15 (b) If the trust is not a trust described in subsection (7)(b) of this section by
16 providers of necessary services rendered to the beneficiary or necessary
17 supplies furnished to him; and

18 (c) By the United States or the Commonwealth of Kentucky for taxes due from
19 him on account of his interest in the trust or the income therefrom.

20 (7) (a) If a person creates for his own benefit a trust with a provision restraining the
21 voluntary or involuntary alienation of his interest, his interest nevertheless
22 shall be subject to alienation by operation of law or legal process.

23 (b) This subsection shall not be construed to subject to alienation any interest in
24 an individual retirement account or annuity, tax sheltered annuity, simplified
25 employee pension, pension, profit-sharing, stock bonus, or other retirement
26 plan described in the Internal Revenue Code of 1986, as amended, which
27 qualifies for the deferral of current income tax until the date benefits are

distributed.

(c) For purposes of this subsection, a person has not created a trust for such person's own benefit solely because a trustee who is not such person is authorized under the trust instrument to pay or reimburse such person for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by such person under the law imposing the tax.

(8) (a) For the purposes of this section, amounts and property contributed to the following trusts are not deemed to have been contributed by the settlor of the trust, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts shall not be treated as a settlor:

1. An irrevocable inter vivos marital trust that is treated as qualified terminable interest property under Section 2523(f) of the Internal Revenue Code of 1986, as amended, if the settlor is a beneficiary of the trust after the death of the settlor's spouse;

2. An irrevocable inter vivos marital trust that is treated as a general power of appointment trust under Section 2523(e) of the Internal Revenue Code if the settlor is a beneficiary of the trust after the death of the settlor's spouse;

3. An irrevocable inter vivos trust for the spouse of the settlor that does not qualify for the gift tax marital deduction if the settlor is a beneficiary of the trust only after the death of the settlor's spouse.

(b) For the purposes of this subsection, a person is a beneficiary whether so named under the initial trust instrument or through the exercise by that person's spouse or by another person of a limited or general power of appointment.

(c) For purposes of this section, the settlor shall be any person who:

1. Created the trust;

1 2. Contributed property to the trust; or

2 3. Is deemed to have contributed property to the trust.

3 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 387 TO BE
4 NUMBERED KRS 387.855 IS CREATED TO READ AS FOLLOWS:

5 In developing and establishing a plan to preserve and protect a ward's assets pursuant
6 to this chapter, a guardian, conservator, or limited conservator may consider the
7 benefits to the ward of establishing a special needs trust for the ward.

8 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 387 TO BE
9 NUMBERED KRS 387.860 IS CREATED TO READ AS FOLLOWS:

10 The following definitions apply with respect to Sections 8 to 18 of this Act:

11 (1) "Special needs person" means a person who, by reason of his or her disability,
12 qualifies as a disabled individual under 42 U.S.C. sec. 1396p and whose disability
13 is the basis for the exemption from Medicaid or Supplemental Security Income
14 (SSI) transfer penalties, or both, either as an individual or as a special needs trust
15 beneficiary under 42 U.S.C. sec. 1396p;

16 (2) "Grantor" means an individual who is expressly empowered under 42 U.S.C. sec.
17 1396p, or this chapter, to establish a special needs trust for a special needs
18 person, qualifies as a grantor. Further, any individual with standing to petition
19 the court under Section 10 of this Act may also serve as a grantor of a special
20 needs trust;

21 (3) "Special needs trust" means a trust described in 42 U.S.C. sec. 1396p (d)(4)(A) or
22 (C) which may receive assets of a special needs person or another person on
23 behalf of the special needs person;

24 (4) "The court" for the purposes of Section 8 of this Act, means:

25 (a) Where the special needs person has acquired, or will be acquiring, assets
26 which are the subject of any judicial proceedings, the court where such
27 proceedings had been brought, or where such proceedings are pending; and

(b) In all other cases, in the District Court in the county where the special needs person resides; and

(5) "Interested parties" for the purposes of this chapter, means:

(a) Any individual who would have standing to petition the court for appointment as a legal guardian or conservator under this chapter;

(b) Any fiduciary of the special needs person, including but not limited to his or her legal guardian, conservator, attorney-in-fact, or trustee whether corporate or individual;

(c) If the special needs person is a ward of the state, the Protection and Advocacy Division of the Department for Public Advocacy; and

(d) If there is, or is believed to be, a Medicare or Medicaid lien, or subrogation rights with respect to the special needs person which have not been fully satisfied or discharged at the time the petition is filed, then the appropriate agency or other holder of such rights or claims.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 387 TO BE NUMBERED KRS 387.865 IS CREATED TO READ AS FOLLOWS:

Any individual who qualifies as a grantor under Section 9 of this Act may petition the court to create, establish, or otherwise approve the creation or establishment of a special needs trust as defined in Section 9 of this Act. In addition, the following shall have standing to petition the court to create, establish, or otherwise approve the creation or establishment of a special needs trust:

(1) Any firm or individual which occupies a fiduciary relationship to the special needs person, including but not limited to a guardian ad litem, legal guardian, conservator, limited conservator, trustee of any trust, and personal representative of a decedent's estate where the special needs person is a beneficiary;

(2) The special needs person himself or herself and his or her spouse;

(3) The siblings or nieces and nephews of the disabled person;

1 (4) An individual holding power of attorney granted by the special needs person; and
 2 (5) In cases where the special needs person is under disability as described in SCR
 3 3.130 (1.14) and there is no individual referred to in this section who is available
 4 or willing to petition the court, then legal counsel retained by the special needs
 5 person or one who is actively involved on behalf of the special needs person,
 6 whether as a social worker, case manager, care provider, or otherwise, shall also
 7 have standing to petition the court under this section.

8 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 387 TO BE
 9 NUMBERED KRS 387.870 IS CREATED TO READ AS FOLLOWS:

10 The petition shall set forth a brief statement as to the specific physical or psychological
 11 circumstances of the special needs person which form the basis for the petition, and
 12 shall include the following information:

13 (1) The name and address of the petitioner and the petitioner's relationship to the
 14 special needs person;

15 (2) The name, age, and address of the special needs person;

16 (3) The name and address of the grantor of the trust, and the grantor's relationship
 17 to the special needs person;

18 (4) The name, address, and relationship of the proposed trustee or co-trustees of the
 19 special needs trust;

20 (5) The name and address of each reasonably ascertainable interested party;

21 (6) The facts specific to the special needs person and the petitioner to demonstrate to
 22 the court that the establishment of a special needs trust for the special needs
 23 person is proper under 42 U.S.C. sec. 1396p; and

24 (7) Whether there are any existing liens or claims against the special needs person.

25 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 387 TO BE
 26 NUMBERED KRS 387.875 IS CREATED TO READ AS FOLLOWS:

27 Along with the petition the court shall be provided with the following documents or

1 information:

2 (1) A draft of the proposed special needs trust agreement;

3 (2) If there is litigation pending which involves the special needs person, the
 4 petitioner shall submit a brief statement describing the litigation, the expected
 5 amount or finally determined amount of the recovery, the existence and amount
 6 of any liens or charges applicable to the recovery including any applicable
 7 Medicare or Medicaid liens, and the name and address of the payor of the
 8 recovery; and

9 (3) If the special needs person lives in a nursing home or other supervised living
 10 arrangement and is receiving, or expected to receive, public assistance benefits,
 11 then the petitioner shall inform the court of the nature of the benefits and the
 12 amount thereof.

13 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 387 TO BE
 14 NUMBERED KRS 387.880 IS CREATED TO READ AS FOLLOWS:

15 The petition shall be docketed with the court and set for hearing unless the court shall
 16 otherwise determine. Notice of the hearing shall be given to each interested party not
 17 less than fourteen (14) days in advance, in accordance with KRS 386.655 unless
 18 waived in writing. The court may assign a guardian ad litem to advise the court with
 19 respect to the suitability of the special needs trust.

20 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 387 TO BE
 21 NUMBERED KRS 387.885 IS CREATED TO READ AS FOLLOWS:

22 Upon review of the petition and the supplemental information and report, if it appears
 23 to the court that the circumstances indicate that the special needs person qualifies as a
 24 beneficiary for whom a special needs trust may properly be established under 42 U.S.C.
 25 sec. 1396p, the court may order that the trust be established. The court may then
 26 proceed to determine whether as part of the order there are other matters to be
 27 addressed, including but not limited to the following:

- 1 (1) Whether the proposed trustee or each co-trustee is suitable;
 2 (2) Whether all or a portion of the assets or income, or both, belonging to or payable
 3 to the special needs person should become part of the trust;
 4 (3) Whether there are any charges against the funds which should be paid before the
 5 trust be established;
 6 (4) The suitability of requiring surety on the bond of the trustee or co-trustees; and
 7 (5) Any other matters the court deems appropriate for ruling.
 8 The order of the court establishing the trust shall be final and appealable on the same
 9 basis as any other civil proceeding involving trusts.

10 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 387 TO BE
 11 NUMBERED KRS 387.890 IS CREATED TO READ AS FOLLOWS:

12 The court may enter an order modifying an existing trust, whether established by the
 13 court under this chapter, or whether the trust has been otherwise established, upon
 14 petition demonstrating to the court that there is just cause to modify the trust to
 15 preserve the trust purposes of protecting the trust assets for the benefit of the special
 16 needs person. Any such petition shall comport with Sections 11, 12, and 13 of this Act.
 17 If the trust is administered or registered in a county other than where the special needs
 18 person resides when a petition is brought to modify a trust, jurisdiction and venue shall
 19 be determined in accordance with KRS 386.690, except that no such order of
 20 modification shall limit, modify, or defeat the trustee's duty, where required under 42
 21 U.S.C., sec. 1396p, to reimburse the state from the trust assets for benefits paid on
 22 behalf of the special needs person at the death of the special needs person, or the
 23 termination of the trust during the lifetime of the special needs person, as the case may
 24 be.

25 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 387 TO BE
 26 NUMBERED KRS 387.895 IS CREATED TO READ AS FOLLOWS:

27 Upon appropriate petition in accordance with the above requirements of Sections 11,

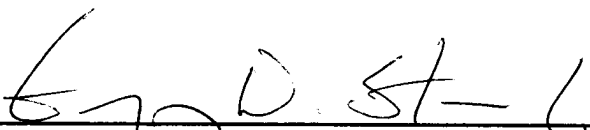
1 12, and 13 of this Act with respect to the establishment or approval of a special needs
 2 trust, the court may also permit the petitioner to add or otherwise contribute additional
 3 assets or income, or both, to an existing or newly created or existing special needs
 4 trust.

5 →SECTION 17. A NEW SECTION OF KRS CHAPTER 387 TO BE
 6 NUMBERED KRS 387.900 IS CREATED TO READ AS FOLLOWS:


7 As part of the order by which the trust is created, the court shall determine whether the
 8 trustee of the special needs trust shall or shall not be required to file periodical
 9 settlements.

10 →SECTION 18. A NEW SECTION OF KRS CHAPTER 387 TO BE
 11 NUMBERED KRS 387.910 IS CREATED TO READ AS FOLLOWS:

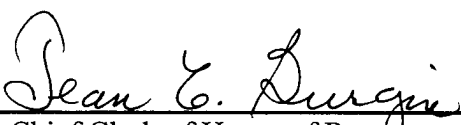
12 The purpose of Sections 8 to 18 of this Act is primarily to establish a framework by
 13 which a disabled individual who qualifies as a special needs person, or his or her
 14 family, care manager, or fiduciary shall have access to the courts to secure the benefits
 15 of federal and state law public assistance benefits as set forth in 42 U.S.C. sec. 1396p.
 16 In construing various provisions of Sections 8 to 18 of this Act, the court shall be
 17 mindful of this purpose.



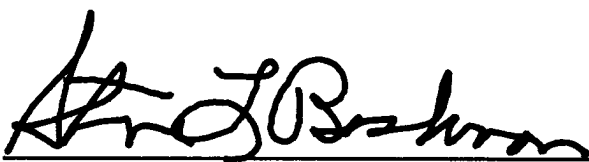
Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 4-11-12